IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 18712 of 2004

Between:

P.Narasimha Rao, S/o.Kotaiah, occ: Agriculture

(Ex.President , Cherlagudipadu PASCS),Gurazala Mandal, Guntur Dist.

..... PETITIONER

AND

1 The District Cooperative Officer, Guntur, Guntur Dist.
2 The Deputy Registrar of Cooperative Societies/Divisional Cooperative officer, Narasaraopet, Guntur District.
3 The Cherlagudipadu Primary Agricultural Coop. Society, Cherlagudipadu, Gurazala Mandal, Guntur Dist. rep.by its P.I.C./Chairman.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in issuing surcharge proceedings in S.C.No.1/DR/E dated 20-10-2003 and consequential auction notice in E.P.No.3/ 2003-04 dated 20-09-2004 for auctioning the properties under Sy Nos.999 admeasuring Ac.2.12, Sy.985/1 Ac.5.00 House extent, Sy.No.985/3 - Ac.1.87 (House), Sy.No.985/1 - Ac.1.38 (House), Sy.Nos.989/1 - 990/1A, 2, 1A to an extent of Ac.2.36 cents of the petitioner without conducting the enquiry as directed by the A.P. Cooperative Tribunal in O.A.No.87/1994 in Judgment dated 11-04-1997 and to declare the same as illegal, arbitrary and contrary to the A.P. Cooperative societies Act and Rules made thereunder.

Counsel for the Petitioner: MR.V.AJAYAKUMAR, Advocate.

Counsel for the Respondents: Govt. Pleader for COOPERATION

The Court made the following:

Oral Order:

Heard the learned counsel for the petitioner and also learned Government Pleader for Cooperation and both the counsel have agreed to dispose of the writ petition finally.

Against the surcharge order dated 18-05-1994 petitioner filed an appeal before the Tribunal in O.A.No.87 of 1994. The Tribunal by judgment dated 11-04-1997 set aside the surcharge order and remanded the matter for fresh enquiry. On such remand necessary notices were issued to the petitioner for participating the enquiry, but he failed to participate in the enquiry which resulted in issuing surcharge order S.C.No.1/DR/E dated 20-10-2003 for due recovery of Rs.46,460/-. The petitioner has not chosen to challenge the said order by way of further appeal, but filed the present writ petition questioning the E.P. proceedings. If the petitioner is aggrieved by the surcharge order, he has to file an appeal before the Tribunal but cannot question the same in a petition filed under Article 226 of the Constitution, when E.P. proceedings are initiated. In view of the same, I see no grounds to stay the E.P. proceedings.

The writ petition is accordingly dismissed. However, petitioner is at liberty to avail the remedy of appeal.

_____ A.GOPAL REDDY, J.

12-10-2004

Murthy

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Cooperative Officer, Guntur, Guntur Dist.
2 The Deputy Registrar of Cooperative Societies/Divisional Cooperative officer, Narasaraopet, Guntur District.
3Two CCs to the Govt. Pleader for Cooperation, High Court Buildings, Hyderabad (OUT)

4.Two CD copies.